

रजिस्टर्ड नं० ल०-33/एस०एम० 14/91.



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, वीरवार, 21 मार्च, 1991/30 फाल्गुन, 1912

हिमाचल प्रदेश सरकार

हिमाचल प्रदेश विधान सभा सचिवालय

अधिसूचना

शिमला-4, 18 मार्च, 1991

संख्या 1-20/91-वि०स०.--हिमाचल प्रदेश विधान सभा के प्रक्रिया एवं कार्य संचालन नियम, 1973 के नियम 135 के अन्तर्गत, "हिमाचल प्रदेश विलास वस्तुओं पर कर (होटलों और किराया गृहों में) (संशोधन)

विधेयक, 1991 (1991 का विधेयक संख्यांक 14) जो आज दिनांक 18 मार्च, 1991 को हिमाचल प्रदेश विधान सभा में पुरः स्थापित हो गया है, सर्वसाधारण की सूचनार्थ राजपत्र में मुद्रित करने हेतु प्रेषित किया जाता है ।

लक्ष्मण सिंह,
सचिव ।

हिमाचल प्रदेश विलास वस्तुओं पर कर (होटलों और किराया गृहों में) (संशोधन) विधेयक, 1991

(विधान सभा में पुरःस्थापित रूप में)

हिमाचल प्रदेश टैक्स आन लक्षरीज (इन होटलज ऐण्ड लॉजिंग हाऊसिज) ऐक्ट, 1979 (1979 का 15) का और संशोधन करने के लिए विधेयक।

भारत गणराज्य के ब्यालीसवें वर्ष में हिमाचल प्रदेश विधान सभा द्वारा निम्नलिखित रूप में यह अधिनियमित होः—

1. इस अधिनियम का संक्षिप्त नाम हिमाचल प्रदेश विलास वस्तुओं पर कर (होटलों संक्षिप्त नाम और किराया गृहों में) (संशोधन) अधिनियम, 1991 है।

2. हिमाचल प्रदेश टैक्स आन लक्षरीज (इन होटलज ऐण्ड लॉजिंग हाऊसिज) धारा 2 का अधिनियम, 1979 (जिसे इसमें इसके पश्चात् मूल अधिनियम कहा गया है) की धारा संशोधन।
1979 का 15।
2 में,—

(i) खण्ड (a) के स्थान पर निम्नलिखित खण्ड (a) रखा जाएगा, अर्थात्:—

“(a) “assessing authority” means the Assistant Excise and Taxation Commissioner or the Excise and Taxation Officer, appointed under sub-section (1) of section 3 of this Act and conferred the powers under sub-section (2) of section 3 thereof for carrying out the purposes of this Act;”;

(ii) खण्ड (c) के पश्चात् निम्नलिखित खण्ड (cc) अन्तःस्थापित किया जाएगा, अर्थात्:—

“(cc) “Deputy Excise and Taxation Commissioner”, means the Deputy Excise and Taxation Commissioner, appointed under sub-section (1) of section 3 of this Act, to assist the Commissioner and shall also include the Joint Excise and Taxation Commissioner;”;

(iii)-खण्ड (e) में शब्दों “twenty five” के स्थान पर “fifty” शब्द रखा जाएगा ;

(iv) खण्ड (f) के अन्त में आए शब्द “and” का लोप किया जाएगा; और

(v) खण्ड (g) में चिन्ह “.” के स्थान पर “; and” चिन्ह और शब्द रखा जाएगा और तत्पश्चात् खण्ड (h) जोड़ा जाएगा, अर्थात्:—

“(h) “registered” means registered under this Act.”

धारा 4 का संशोधन । 3. मूल अधिनियम की धारा 4 की उप-धारा (2) के स्थान पर निम्नलिखित उप-धारा (2) रखी जाएगी, अर्थात् :—

“(2) The luxury tax shall be payable by the persons residing at a hotel at the following rates, namely:—

- (a) Where the charges for residence are fifty rupees but do not exceed one hundred and fifty rupees per day per person ; and 8 percentum of such charges, and
- (b) Where the charges for residence exceed one hundred and fifty rupees per day per person ; 10 percentum of such charges :

Provided that, where any such charges are paid by any person other than the citizen of India, in any foreign exchange, then such person or where such charges are paid by any person or class of persons as the State Government may by order direct, such as foreigners staying as guests in India of any Government, or of any corporation or company owned or controlled by the Government, or such other person as in the opinion of the State Government, if it is expedient in the public interest to exempt, then such person or persons shall be exempt from the payment of the luxury tax :

Provided further that, where charges are levied otherwise than on daily basis or per person, then, charges for determining the tax liability under this section, shall be computed as for a day and per person based on the period of occupation of the residence for which the charges are made and the number of persons actually occupying or permitted to occupy according to the rules or custom of the hotel.”.

नई धारा 5-A का अन्तः- स्थापन । 4. मूल अधिनियम की धारा 5 के पश्चात् निम्नलिखित नई धारा 5-A अन्तःस्थापित की जाएगी, अर्थात् :—

- “5-A. *Registration of proprietor.*—(1) No proprietor shall, while being liable to pay tax under this Act, carry on business as a proprietor unless he has been registered and possesses a registration certificate.
- (2) Every proprietor required by sub-section (1) to be registered shall make an application in this behalf in the prescribed manner to the assessing authority of the district concerned.
 - (3) If the assessing authority is satisfied that an application for registration is in order, he shall, in accordance with such rules and on payment of such fee as may be prescribed, register the applicant and grant him certificate of registration in the prescribed form.
 - (4) The assessing authority may, from time to time, by order, amend or cancel any certificate of registration on any sufficient cause including the cessation of liability to pay luxury tax under this Act :

Provided that no order affecting any person adversely shall be made under this sub-section without affording him a reasonable opportunity of being heard.

- (5) When any proprietor has paid the amount of penalty imposed under section 14 in respect of any contravention of sub-section (1) of this section, the assessing authority shall register such proprietor

and grant him a certificate of registration and such registration shall take effect as if it had been made under sub-section (3) of this section on the proprietor's application.

- (6) When any business in respect of which a certificate of registration has been granted under this section has been discontinued or transferred in the name of other proprietor or person, the assessing authority shall cancel the registration and the cancellation shall come into force after such discontinuance or transfer."

5. मूल अधिनियम की धारा 6 के स्थान पर निम्नलिखित धारा 6 रखी जाएगी, अर्थात्:— धारा 6 का प्रतिस्थापन ।

"6. *Payment of tax and submission of returns.*—(1) Every proprietor, liable to pay luxury tax under this Act shall deposit the full amount of luxury tax due and payable by him, in respect of each month within eight days after the close of the month to which the luxury tax relates into a Government treasury or the State Bank of India, and shall furnish to the assessing authority of the district concerned a proof of having paid the tax due in the prescribed manner.

(2) Every proprietor shall furnish a return in the prescribed form to the assessing authority of the district concerned quarterly within 15 days after the close of each quarter alongwith the receipts of payment of luxury tax for each month of the quarter to which the return relates.

(3) Every such return shall show the number of rooms or other accommodation in the hotel which is intended to be occupied, the number of persons who occupied such rooms or accommodation, the periods of their stay, the amount of charges recovered from them, together with such other information as may be prescribed.

(4) Every return shall be verified in the prescribed manner.

(5) If a proprietor fails without sufficient cause to comply with the requirements of provisions of sub-sections (1), (2) and (3) the assessing authority of the district concerned may, after giving such proprietor a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum not exceeding one and a half times of the amount of luxury tax due and payable by him under this Act.

(6) If a proprietor has maintained false or incorrect accounts with a view to suppressing any transaction pertaining to his business, or has concealed any particulars of his business or has furnished to, or produced before, any assessing authority under this Act or the rules made thereunder any account, return or information which is false or incorrect in any material particular, the Commissioner or any other person appointed to assist him under sub-section (1) of section 3 of this Act may, after affording such proprietor a reasonable opportunity of being heard, direct him to pay by way of penalty in addition to the luxury tax to which he is assessed or is liable to be assessed, an amount which shall not be less than twenty-five per centum but which shall not exceed one and a half times of the amount of luxury tax to which he is assessed or is liable to be assessed."

धारा 7 का 6. मूल अधिनियम की धारा 7 के स्थान पर निम्नलिखित धारा 7 रखी जाएगी, प्रतिस्थापन। अर्थात्:—

- “7. *Assessment of luxury tax.*—(1) The amount of luxury tax due from a proprietor shall be assessed separately for every half financial year or part thereof.
- (2) If the assessing authority is satisfied without requiring the presence of proprietor or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of luxury tax due from the proprietor on the basis of such returns.
- (3) If the assessing authority is not satisfied without requiring the presence of proprietor who furnished the returns or production of evidence, that the returns furnished in respect of any period are correct and complete, he shall serve on such proprietor a notice in the prescribed manner requiring him, on a date and at a place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such proprietor may rely in support of such returns.
- (4) On the day specified in the notice or as soon afterwards as may be, the assessing authority shall, after hearing the proprietor and considering such evidence as the proprietor may produce, and such other evidence as the assessing authority may require on specified points, assess the amount of luxury tax due from the proprietor.
- (5) If a proprietor, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (3), the assessing authority shall, within five years after the expiry of such period, proceed to assess to the best of his judgment the amount of the luxury tax due from the proprietor.
- (6) If a proprietor does not furnish returns in respect of any period by the specified date, the assessing authority shall within five years after the expiry of such period, after giving the proprietor a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of luxury tax, if any due from the proprietor.
- (7) If upon information which has come into his possession, the assessing authority is satisfied that any proprietor has been liable to pay luxury tax under this Act in respect of any period but has failed to apply for registration, the assessing authority shall, within five years after the expiry of such period after giving the proprietor a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the proprietor in respect of such period and all subsequent periods and in cases where such proprietor has wilfully failed to apply for registration, the assessing authority may direct that the proprietor shall pay by way of penalty, in addition to the amount of luxury tax so assessed, an amount which shall not be less than ten per centum, but which shall not exceed one and a half times of the amount of luxury tax to which he is assessed.
- (8) The amount of any luxury tax, penalty or interest payable under this Act shall be paid by the proprietor in the manner prescribed

by such date as may be specified in the notice issued by the assessing authority for the purpose and the date so specified shall not be less than fifteen days and not more than thirty days from the date of service of such notice.

- (9) If the luxury tax assessed under this Act is not paid by any proprietor within the time specified therefor in the notice of assessment, the assessing authority of the district concerned may, after giving such proprietor an opportunity of being heard, impose on him a penalty not exceeding in amount the sum due from him.

- (10) Any assessment made under this section shall be without prejudice to any penalty imposed under this Act".

7. मूल अधिनियम की धारा 7 के पश्चात् निम्नलिखित धाराएँ 7-A और 7-B अन्तःस्थापित की जाएंगी, अर्थात्:—

नई धाराओं

7-A और

7-B का

अन्तःस्थापन।

"7-A. Re-assessment of luxury tax.—(1) If in consequence of any information which has come into his possession, the assessing authority discovers that the luxury tax payable by a proprietor has been under-assessed or has escaped assessment in any financial year or half financial year, as the case may be, the assessing authority may, at any time within five years following the close of such year for which luxury tax is proposed to be re-assessed and after giving the proprietor a reasonable opportunity in the prescribed manner of being heard, proceed to re-assess the luxury tax payable, which has been under-assessed or has escaped assessment.

- (2) The assessing authority or any such authority as may be appointed by the Government, may, at any time, within one year from the date of any order passed by him and subject to such conditions as may be prescribed, rectify any clerical or arithmetical mistake apparent from the record.

7-B. Payment of interest.—(1) If any proprietor fails to pay the amount of luxury tax due from him under this Act, except to the extent mentioned in sub-section (2), he shall, in addition to the amount of luxury tax, be liable to pay simple interest on the amount of luxury tax due and payable by him, at the rate of one percentum per month from the date immediately following the last date on which the proprietor should have filed the return and paid the luxury tax under the Act for a period of one month, and thereafter at the rate of one and a half percentum per month till the default continues.

- (2) If the amount of luxury tax or penalty due from a proprietor is not paid by him within the period specified in the notice issued under sub-section (8) of section 7 or, if no period is specified within thirty days from the service of such notice, the proprietor shall, in addition to the amount of luxury tax or penalty, be liable to pay simple interest on such amount, at the rate of one percentum per month from the date immediately following the date on which the period specified in the notice or the period of thirty days, as the case may be, expires, for a period of one month, and thereafter at the rate of one and a half percentum per month till the default continues :

Provided that where the recovery of any luxury tax or penalty is stayed by an order of any court, the amount of luxury tax or penalty shall, after the order of stay is vacated, be recoverable alongwith interest at the aforesaid rate on the amount ultimately found to be due and such interest shall be payable from the date the luxury tax or penalty first became due.

(3) The amount of interest payable under this section shall—

- (i) be calculated by considering if part of a month is more than fifteen days as one month and any amount if more than fifty rupees but less than one hundred rupees as one hundred rupees ;
- (ii) for the purposes of collection and recovery, be deemed to be luxury tax under this Act ; and
- (iii) be in addition to the penalty, if any, imposed under this Act.”.

धारा 9 का
प्रतिस्थापन ।

8. मूल अधिनियम की धारा 9 के स्थान पर निम्नलिखित धारा 9 रखी जाएगी, अर्थात्:—

- “9. *Revision.*—(1) The Commissioner may, of his own motion, call for the record of any proceedings which are pending before, or have been disposed of by, any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.
- (2) The State Government may by notification confer on any officer powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.
- (3) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.”.

धाराओं 13-
A और 13-
B का
अन्तःस्थापन ।

9. मूल अधिनियम की धारा 13 के पश्चात् निम्नलिखित धाराएं 13-A और 13-B रखी जाएंगी, अर्थात्:—

- “13-A. *Proprietor to maintain accounts.*—(1) Every registered proprietor and other proprietor who may be required so to do, by the Commissioner or any person appointed to assist him under sub-section (1) of section 3, by notice served on him, shall keep a true account of the luxury provided by him in his hotel, and if the Commissioner or such other person considers that such accounts are not sufficiently clear or intelligible to enable him to make a proper check of the returns or the statement furnished, he may require such proprietor by notice in writing to keep such accounts including such records of luxury provided in his hotel, as he may consider necessary.
- (2) Every registered proprietor shall, issue to the customer or customers a bill or a cash memorandum serially numbered bearing the name and address of the proprietor, the date of issue and the signature of such proprietor or his servant, manager or agent and showing therein such other particulars of charges for the luxury provided in

the hotel, and preserve a carbon copy of such bill or cash memorandum for a period of not less than five years from the date of issue thereof.

- (3) Where any proprietor contravenes the provisions of sub-section (1) or sub-section (2), the Commissioner or any person appointed to assist him under sub-section (1) of section 3, may, after affording such proprietor a reasonable opportunity of being heard, impose upon him a penalty which may extend to five hundred rupees.

13-B. Power to transfer proceedings.—The Commissioner may, after giving the parties a reasonable opportunity of being heard in the matter, where-ever it is possible to do so, and after recording his reasons for doing so, by order in writing transfer any proceedings under any provisions of this Act, from any officer to any other officer subordinate to him :

Provided that nothing in this section shall be deemed to require any such opportunity to be given where the offices of both the aforesaid officers are situated in the same city, locality or place.

Explanation.—In this section, the word “proceedings” in relation to any proprietor whose name is specified in any order issued thereunder, means all or any proceedings under this Act in respect of any period which may be pending on the date of such order or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any period in relation to such proprietor.”

10. मूल अधिनियम की धारा 14 की उप-धारा (2) के स्थान पर निम्नलिखित उप-धारा (2) रखी जाएगी, अर्थात् :—

धारा 14 का संशोधन।

“(2) The Officer not below the rank of the Excise and Taxation Officer, appointed under sub-section (2) of section 3, may, after affording to the person concerned a reasonable opportunity of being heard, impose penalty specified under sub-section (1).”

11. मूल अधिनियम की धारा 17 की उप-धारा (2) में,—

धारा 17 का संशोधन।

(क) विद्यमान खण्ड (a) को खण्ड (aa) के रूप में पुनः संख्यांकित किया जाएगा और इस प्रकार पुनः संख्यांकित खण्ड (aa) से पूर्व निम्नलिखित नया खण्ड (a) अन्तःस्थापित किया जाएगा, अर्थात् :—

“(a) to prescribe the forms, fee and the manner in which the registration certificate is to be issued under section 5-A;”;

(ख) खण्ड (b) के पश्चात् निम्नलिखित नए खण्ड (bb) और (bbb) अन्तःस्थापित किए जाएंगे, अर्थात् :—

“(bb) the manner of payment of luxury tax, penalty or interest under sub-section (8) of section 7 ; and

(bbb) the manner in which the opportunity to be given to the proprietor under sub-section (1) and the conditions as may be prescribed under sub-section (2) of section 7-A.”

(उद्देश्यों और कारणों का कथन)

राज्य में आबकारी एवं कराधान विधि के प्रभावकारी कार्यान्वयन के लिए, राज्य को परिक्षेत्रों में विभाजित किया गया है। प्रत्येक परिक्षेत्र संयुक्त आबकारी एवं कराधान आयुक्त तथा उप-आबकारी एवं कराधान आयुक्त के प्रभाराधीन कार्य कर रहा है और प्रत्येक जिला, सहायक आबकारी एवं कराधान आयुक्त या आबकारी एवं कराधान अधिकारी के प्रभाराधीन है। सहायक आबकारी एवं कराधान अधिकारी के पद, आबकारी एवं कराधान अधिकारी के रूप में पुनः पदनामित किए गए हैं और इसके फलस्वरूप अब हिमाचल प्रदेश में सहायक आबकारी एवं कराधान अधिकारी कार्यरत नहीं हैं। अतः तदनुसार हिमाचल प्रदेश टैक्स आन लक्षरीज (इन होटलज एण्ड लौजिंग हाऊसिज) ऐक्ट, 1979 में परिभाषाओं को संशोधित करना आवश्यक हो गया है।

2. उन पर्यटकों को जो अधिक खर्च नहीं कर सकते हैं, राहत पहुंचाने के लिए यह विनिश्चय किया गया है कि जहां पर आवास परिव्यय प्रति व्यक्ति प्रतिदिन पचास रुपये से अधिक न हो, वहां उक्त अधिनियम के अधीन कोई विलास वस्तु कर प्रभारित नहीं किया जाएगा। राजकोष की क्षति की पूर्ति करने और अतिरिक्त स्त्रोतों को गतिशील बनाने के लिए भी, जहां होटल या किराया गृहों में उपलब्ध कराए गए आवास का परिव्यय पचास रुपये प्रति व्यक्ति प्रतिदिन है किन्तु एक सौ पचास रुपये से अधिक नहीं है, वहां विलास वस्तु कर आठ प्रतिशत की दर से और जहां पर परिव्यय एक सौ पचास रुपये से अधिक है, वहां दस प्रतिशत की दर से विलास वस्तु कर उद्गृहीत करने का अब प्रस्ताव किया गया है।

3. कर चोरी को रोकने के उद्देश्य से, यह वांछनीय है कि कर-दाताओं को रजिस्ट्रीकरण प्रमाण-पत्र जारी किए जाएं और उनके लिए बिल जारी करना और अपना सही लेखा रखना आवश्यक बना दिया जाए। इसके अतिरिक्त मासिक आधार पर विवरणियां दायर करने, विलास वस्तु कर के संदाय और कर निर्धारण की विद्यमान पद्धति, होटलों के स्वामियों तथा विभाग के लिए भी दुष्कर सिद्ध हुई है। अतः इस विद्यमान पद्धति को बदल कर इसके स्थान पर त्रैमासिक विवरणियों, अर्द्धवार्षिक निर्धारणों और मासिक आधार पर कर के संदाय के लिए उपबन्ध करने का विनिश्चय किया गया है। इसके अलावा, विलास वस्तु कर के राजकोष में निर्वाध प्रवाह को सुनिश्चित करने के लिए, कर के विलम्बित संदाय पर उपयुक्त ब्याज उद्गृहीत करने के लिए उपबन्ध करना भी आवश्यक है। इसके अतिरिक्त, एक अधीनस्थ प्राधिकारी से दूसरे की कार्यवाहियों को स्थानान्तरित करने से सम्बद्ध उपबन्ध भी आवश्यक समझे गए हैं और निर्धारण, पुनः निर्धारण तथा पुनरीक्षण सम्बन्धी उपबन्धों को उचित रूप से संशोधित करना भी अपेक्षित है। उक्त कारणों से हिमाचल प्रदेश टैक्स आन लक्षरीज (इन होटलज एण्ड लौजिंग हाऊसिज) ऐक्ट, 1979 में संशोधन करना आवश्यक हुआ है।

यह विधेयक उक्त उद्देश्यों की पूर्ति के लिए है।

नगीन चन्द्र पाल,
प्रभारी मन्त्री।

शिमला :

तारीख 18 मार्च, 1991.

(द्वितीय ज्ञापन)

विधेयक के खण्ड 3 के अधिनियमित होने पर बिना किसी अतिरिक्त व्यय के, राजकोष में प्रति वर्ष लगभग सात लाख रुपये की अतिरिक्त आय होगी।

प्रत्यायोजित विधान सम्बन्धी ज्ञापन

खण्ड II, हिमाचल प्रदेश टैक्स आन लक्शरीज (इन होटलज एण्ड लॉजिंग हाऊसिज) ऐक्ट, 1979 की धारा 17 का संशोधन करके, प्ररूप, शुल्क और रीति जिममें रजिस्ट्रिकरण प्रमाण-पत्र जारी किया जाएगा, विलास वस्तु करके सदाय की रीति, शास्ति या ब्याज, रीति जिममें स्वामी को सुनवाई का अवसर प्रदान किया जाएगा, और अभिलेख में प्रत्यक्ष किसी लिपिकीय या गणितीय अशुद्धि को ठीक करने की शर्तों को विहित करने के लिए राज्य सरकार को नियम बनाने के लिए सशक्त करने का उपबन्ध करता है।

संविधान के अनुच्छेद 207 के अधीन राज्यपाल की सिफारिशें

[आबकारी और कराधान विभाग की तस्ति सं० ई० एक्स० एन०-एफ० (21)-4/87]

हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश विलास वस्तुओं पर कर (होटलों और किराया गृहों में) (संशोधन) विधेयक, 1991 की विषय-वस्तु के बारे में सूचित किए जाने के पश्चात् भारत के संविधान के अनुच्छेद 207 के अधीन उक्त विधेयक को विधान सभा में पुरःस्थापित करने और उस पर विचार करने की सिफारिश करते हैं।

AUTHORITATIVE ENGLISH TEXT

Bill No. 14 of 1991.

THE HIMACHAL PRADESH TAX ON LUXURIES (IN HOTELS AND LODGING HOUSES) (AMENDMENT) BILL, 1991

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

further to amend the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979 (Act No. 15 of 1979).

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Forty-second Year of the Republic of India as follows:—

1. This Act may be called the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) (Amendment) Act, 1991. Short title.

15 of 1979 2. In section 2 of the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979 (hereinafter called the principal Act),— Amendment of section 2.

(i) for clause (a), the following shall be substituted, namely:—

“(a) “assessing authority” means the Assistant Excise and Taxation Commissioner or the Excise and Taxation Officer, appointed under sub-section (1) of section 3 of this Act and conferred the powers under sub-section (2) of section 3 thereof for carrying out the purposes of this Act; ”;

(ii) after clause (c), the following clause (cc) shall be inserted, namely:—

“(cc) “Deputy Excise and Taxation Commissioner”, means the Deputy Excise and Taxation Commissioner, appointed under sub-section (1) of section 3 of this Act, to assist the Commissioner and shall also include the Joint Excise and Taxation Commissioner; ”;

(iii) in clause (e), for the word “twenty-five”, the word “fifty” shall be substituted ;

(iv) in clause (f), the word “and” occurring at the end shall be deleted ; and

(v) in clause (g), for the sign “.”, the sign and word “; and” shall be substituted and thereafter, the following clause (h) shall be added, namely:—

“(h) “registered” means registered under this Act.”.

3. For sub-section (2) of section 4 of the principal Act, the following shall be substituted, namely:— Amendment of section 4.

“(2) The luxury tax shall be payable by the persons residing at a hotel at the following rates, namely:—

(a) Where the charges for residence are fifty 8 percentum of rupees but do not exceed one hundred such charges, and and fifty rupees per day per person ; and

- (b) Where the charges for residence exceed 10 per centum of one hundred and fifty rupees per day per such charges : person ;

Provided that, where any such charges are paid by any person other than the citizen of India, in any foreign exchange, then such person or where such charges are paid by any person or class of persons as the State Government may by order direct, such as foreigners staying as guests in India of any Government, or of any corporation or company owned or controlled by the Government, or such other person as in the opinion of the State Government, if it is expedient in the public interest to exempt, then such person or persons shall be exempt from the payment of the luxury tax :

Provided further that, where charges are levied otherwise than on daily basis or per person, then, charges for determining the tax liability under this section, shall be computed as for a day and per person based on the period of occupation of the residence for which the charges are made and the number of persons actually occupying or permitted to occupy according to the rules or custom of the hotel."

Insertion of
section
5-A.

4. After section 5 of the principal Act, the following section 5-A shall be inserted, namely:—

- "5-A. Registration of proprietor.**—(1) No proprietor shall, while being liable to pay tax under this Act, carry on business as a proprietor unless he has been registered and possesses a registration certificate.
- (2) Every proprietor required by sub-section (1) to be registered shall make an application in this behalf in the prescribed manner to the assessing authority of the district concerned.
- (3) If the assessing authority is satisfied that an application for registration is in order, he shall, in accordance with such rules and on payment of such fee as may be prescribed, register the applicant and grant him certificate of registration in the prescribed form.
- (4) The assessing authority may, from time to time, by order, amend or cancel any certificate of registration on any sufficient cause including the cessation of liability to pay luxury tax under this Act :

Provided that no order affecting any person adversely shall be made under this sub-section without affording him a reasonable opportunity of being heard.

- (5) When any proprietor has paid the amount of penalty imposed under section 14 in respect of any contravention of sub-section (1) of this section, the assessing authority shall register such proprietor and grant him a certificate of registration and such registration shall take effect as if it had been made under sub-section (3) of this section on the proprietor's application.
- (6) When any business in respect of which a certificate of registration has been granted under this section has been discontinued or transferred in the name of other proprietor or person, the assessing authority shall cancel the registration and the cancellation shall come into force after such discontinuance or transfer."

5. For section 6 of the principal Act, the following shall be substituted, namely:—

Substitution
of section 6.

- “6. *Payment of tax and submission of returns.*—(1) Every proprietor, liable to pay luxury tax under this Act shall deposit the full amount of luxury tax due and payable by him, in respect of each month within eight days after the close of the month to which the luxury tax relates into a Government treasury or the State Bank of India, and shall furnish to the assessing authority of the district concerned a proof of having paid the tax due in the prescribed manner.
- (2) Every proprietor shall furnish a return in the prescribed form to the assessing authority of the district concerned quarterly within 15 days after the close of each quarter alongwith the receipts of payment of luxury tax for each month of the quarter to which the return relates.
- (3) Every such return shall show the number of rooms or other accommodation in the hotel which is intended to be occupied, the number of persons who occupied such rooms or accommodation, the periods of their stay, the amount of charges recovered from them, together with such other information as may be prescribed.
- (4) Every return shall be verified in the prescribed manner.
- (5) If a proprietor fails without sufficient cause to comply with the requirements of provisions of sub-sections (1), (2) and (3) the assessing authority of the district concerned may, after giving such proprietor a reasonable opportunity of being heard, direct him to pay, by way of penalty, a sum not exceeding one and a half times of the amount of luxury tax due and payable by him under this Act.
- (6) If a proprietor has maintained false or incorrect accounts with a view to suppressing any transaction pertaining to his business or has concealed any particulars of his business or has furnished to, or produced before, an assessing authority under this Act or the rules made thereunder any account, return or information which is false or incorrect in any material particular, the Commissioner or any other person appointed to assist him under sub-section (1) of section 3 of this Act may, after affording such proprietor a reasonable opportunity of being heard, direct him to pay by way of penalty in addition to the luxury tax to which he is assessed or is liable to be assessed, an amount which shall not be less than twenty-five per centum but which shall not exceed one and a half times of the amount of luxury tax to which he is assessed or is liable to be assessed.”

6. For section 7 of the principal Act, the following shall be substituted, namely:—

Substitution
of section 7.

- “7. *Assessment of luxury tax.*—(1) The amount of luxury tax due from a proprietor shall be assessed separately for every half financial year or part thereof.
- (2) If the assessing authority is satisfied without requiring the presence of proprietor or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall assess the amount of luxury tax due from the proprietor on the basis of such returns.

- (3) If the assessing authority is not satisfied without requiring the presence of proprietor who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such proprietor a notice in the prescribed manner requiring him, on a date and at a place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such proprietor may rely in support of such returns.
- (4) On the day specified in the notice or as soon after-wards as may be, the assessing authority shall, after hearing the proprietor and considering such evidence as the proprietor may produce, and such other evidence as the assessing authority may require on specified points, assess the amount of luxury tax due from the proprietor.
- (5) If a proprietor, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (3), the assessing authority shall, within five years after the expiry of such period, proceed to assess to the best of his judgment the amount of the luxury tax due from the proprietor.
- (6) If a proprietor does not furnish returns in respect of any period by the specified date, the assessing authority shall within five years after the expiry of such period, after giving the proprietor a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of luxury tax, if any due from the proprietor.
- (7) If upon information which has come into his possession, the assessing authority is satisfied that any proprietor has been liable to pay luxury tax under this Act in respect of any period but has failed to apply for registration, the assessing authority shall, within five years after the expiry of such period after giving the proprietor a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the proprietor in respect of such period and all subsequent periods and in cases where such proprietor has wilfully failed to apply for registration, the assessing authority may direct that the proprietor shall pay by way of penalty, in addition to the amount of luxury tax so assessed, an amount which shall not be less than ten per centum, but which shall not exceed one and a half times of the amount of luxury tax to which he is assessed.
- (8) The amount of any luxury tax, penalty or interest payable under this Act shall be paid by the proprietor in the manner prescribed by such date as may be specified in the notice issued by the assessing authority for the purpose and the date so specified shall not be less than fifteen days and not more than thirty days from the date of service of such notice.
- (9) If the luxury tax assessed under this Act is not paid by any proprietor within the time specified therefor in the notice of assessment, the assessing authority of the district concerned may, after giving such proprietor an opportunity of being heard, impose on him a penalty not exceeding in amount the sum due from him.
- (10) Any assessment made under this section shall be without prejudice to any penalty imposed under this Act."

7. After section 7 of the principal Act, the following sections 7-A and 7-B shall be inserted, namely:—

Insertion of
sections
7-A & 7-B.

“7-A. Re-assessment of luxury tax.—(1) If in consequence of any information which has come into his possession, the assessing authority discovers that the luxury tax payable by a proprietor has been under-assessed or has escaped assessment in any financial year or half financial year, as the case may be, the assessing authority may, at any time within five years following the close of such year for which luxury tax is proposed to be re-assessed and after giving the proprietor a reasonable opportunity in the prescribed manner of being heard, proceed to re-assess the luxury tax payable, which has been under-assessed or has escaped assessment.

(2) The assessing authority or any such authority as may be appointed by the Government, may, at any time, within one year from the date of any order passed by him and subject to such conditions as may be prescribed, rectify any clerical or arithmetical mistake apparent from the record.

7-B. Payment of interest.—(1) If any proprietor fails to pay the amount of luxury tax due from him under this Act, except to the extent mentioned in sub-section (2), he shall, in addition to the amount of luxury tax, be liable to pay simple interest on the amount of luxury tax due and payable by him, at the rate of one percentum per month from the date immediately following the last date on which the proprietor should have filed the return and paid the luxury tax under the Act for a period of one month, and thereafter at the rate of one and a half percentum per month till the default continues.

(2) If the amount of luxury tax or penalty due from a proprietor is not paid by him within the period specified in the notice issued under sub-section (8) of section 7 or, if no period is specified within thirty days from the service of such notice, the proprietor shall, in addition to the amount of luxury tax or penalty, be liable to pay simple interest on such amount, at the rate of one percentum per month from the date immediately following the date on which the period specified in the notice or the period of thirty days, as the case may be, expires, for a period of one month, and thereafter at the rate of one and a half percentum per month till the default continues :

Provided that where the recovery of any luxury tax or penalty is stayed by an order of any court, the amount of luxury tax or penalty shall, after the order of stay is vacated, be recoverable alongwith interest at the aforesaid rate on the amount ultimately found to be due and such interest shall be payable from the date the luxury tax or penalty first became due.

(3) The amount of interest payable under this section shall—

- (i) be calculated by considering if part of a month is more than fifteen days as one month and any amount if more than fifty rupees but less than one hundred rupees as one hundred rupees ;
- (ii) for the purposes of collection and recovery, be deemed to be luxury tax under this Act ; and

(iii) be in addition to the penalty, if any, imposed under this Act.”.

Substitution
of section 9.

8. For section 9 of the principal Act, the following shall be substituted, namely:—

- “9. *Revision.*—(1) The Commissioner may, of his own motion, call for the record of any proceedings which are pending before, or have been disposed of by, any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.
- (2) The State Government may by notification confer on any officer powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.
- (3) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.”.

Insertion of
sections 13-A
and 13-B.

9. After section 13 of the principal Act, the following sections 13-A and 13-B shall be inserted, namely:—

- “13-A. *Proprietor to maintain accounts.*—(1) Every registered proprietor and other proprietor who may be required so to do, by the Commissioner or any person appointed to assist him under sub-section (1) of section 3, by notice served on him, shall keep a true account of the luxury provided by him in his hotel, and if the Commissioner or such other person considers that such accounts are not sufficiently clear or intelligible to enable him to make a proper check of the returns or the statement furnished, he may require such proprietor by notice in writing to keep such accounts including such records of luxury provided in his hotel, as he may consider necessary.
- (2) Every registered proprietor shall, issue to the customer or customers a bill or a cash memorandum serially numbered bearing the name and address of the proprietor, the date of issue and the signature of such proprietor or his servant, manager or agent and showing therein such other particulars of charges for the luxury provided in the hotel, and preserve a carbon copy of such bill or cash memorandum for a period of not less than five years from the date of issue thereof.
- (3) Where any proprietor contravenes the provisions of sub-section (1) or sub-section (2), the Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, after affording such proprietor a reasonable opportunity of being heard, impose upon him a penalty which may extend to five hundred rupees.

13-B. *Power to transfer proceedings.*—The Commissioner may, after giving the parties a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, by order in writing transfer any proceedings under any provisions of this Act, from any officer to any other officer subordinate to him :

Provided that nothing in this section shall be deemed to require any such opportunity to be given where the offices of both the aforesaid officers are situated in the same city, locality or place.

Explanation.—In this section, the word “proceedings” in relation to any proprietor whose name is specified in any order issued thereunder, means all or any proceedings under this Act in respect of any period which may be pending on the date of such order or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any period in relation to such proprietor.”

10. For sub-section (2) of section 14 of the principal Act, the following shall be substituted, namely:— Amendment of section 14.

“(2) The Officer not below the rank of the Excise and Taxation Officer, appointed under sub-section (2) of section 3, may, after affording to the person concerned a reasonable opportunity of being heard, impose penalty specified under sub-section (1).”

11. In section 17 of the principal Act, in sub-section (2),— Amendment of section 17.

(a) the existing clause (a) shall be re-numbered as clause (aa) and before clause (aa) so re-numbered, the following clause (a) shall be inserted, namely:—

“(a) to prescribe the form, fee and the manner in which the registration certificate is to be issued under section 5-A;”;

(b) after clause (b), the following new clauses (bb) and (bbb) shall be inserted, namely:—

“(bb) the manner of payment of luxury tax, penalty or interest under sub-section (8) of section 7 ; and

(bbb) the manner in which the opportunity to be given to the proprietor under sub-section (1) and the conditions as may be prescribed under sub-section (2) of section 7-A.”.

(iii) be in addition to the penalty, if any, imposed under this Act.”.

Substitution
of section 9.

8. For section 9 of the principal Act, the following shall be substituted, namely:—

- “9. *Revision.*—(1) The Commissioner may, of his own motion, call for the record of any proceedings which are pending before, or have been disposed of by, any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.
- (2) The State Government may by notification confer on any officer powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.
- (3) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.”.

Insertion of
sections 13-A
and 13-B.

9. After section 13 of the principal Act, the following sections 13-A and 13-B shall be inserted, namely:—

- “13-A. *Proprietor to maintain accounts.*—(1) Every registered proprietor and other proprietor who may be required so to do, by the Commissioner or any person appointed to assist him under sub-section (1) of section 3, by notice served on him, shall keep a true account of the luxury provided by him in his hotel, and if the Commissioner or such other person considers that such accounts are not sufficiently clear or intelligible to enable him to make a proper check of the returns or the statement furnished, he may require such proprietor by notice in writing to keep such accounts including such records of luxury provided in his hotel, as he may consider necessary.
- (2) Every registered proprietor shall, issue to the customer or customers a bill or a cash memorandum serially numbered bearing the name and address of the proprietor, the date of issue and the signature of such proprietor or his servant, manager or agent and showing therein such other particulars of charges for the luxury provided in the hotel, and preserve a carbon copy of such bill or cash memorandum for a period of not less than five years from the date of issue thereof.
- (3) Where any proprietor contravenes the provisions of sub-section (1) or sub-section (2), the Commissioner or any person appointed to assist him under sub-section (1) of section 3 may, after affording such proprietor a reasonable opportunity of being heard, impose upon him a penalty which may extend to five hundred rupees.

13-B. *Power to transfer proceedings.*—The Commissioner may, after giving the parties a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, by order in writing transfer any proceedings under any provisions of this Act, from any officer to any other officer subordinate to him :

Provided that nothing in this section shall be deemed to require any such opportunity to be given where the offices of both the aforesaid officers are situated in the same city, locality or place.

Explanation.—In this section, the word “proceedings” in relation to any proprietor whose name is specified in any order issued thereunder, means all or any proceedings under this Act in respect of any period which may be pending on the date of such order or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any period in relation to such proprietor.”.

10. For sub-section (2) of section 14 of the principal Act, the following shall be substituted, namely:— Amendment of section 14.

“(2) The Officer not below the rank of the Excise and Taxation Officer, appointed under sub-section (2) of section 3, may, after affording to the person concerned a reasonable opportunity of being heard, impose penalty specified under sub-section (1).”.

11. In section 17 of the principal Act, in sub-section (2),—

Amendment of section 17.

(a) the existing clause (a) shall be re-numbered as clause (aa) and before clause (aa) so re-numbered, the following clause (a) shall be inserted, namely:—

“(a) to prescribe the form, fee and the manner in which the registration certificate is to be issued under section 5-A;”;

(b) after clause (b), the following new clauses (bb) and (bbb) shall be inserted, namely:—

“(bb) the manner of payment of luxury tax, penalty or interest under sub-section (8) of section 7 ; and

(bbb) the manner in which the opportunity to be given to the proprietor under sub-section (1) and the conditions as may be prescribed under sub-section (2) of section 7-A.”.

STATEMENT OF OBJECTS AND REASONS

For effective implementation of the Excise and Taxation Laws in the State, the State has been divided into two zones. Each zone is functioning under the charge of Joint/Deputy Excise and Taxation Commissioner and each District is under the charge of the Assistant Excise and Taxation Commissioner or the Excise and Taxation Officer. The posts of the Assistant Excise and Taxation Officers have been redesignated as the Excise and Taxation Officers and thus there are at present no Assistant Excise and Taxation Officers working in Himachal Pradesh. As such it has become necessary to revise the definitions accordingly, in the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979.

2. In order to provide relief to those tourists who cannot afford to spend more, it is decided that where the accommodation charges do not exceed fifty rupees per person per day, no luxury tax may be charged under the Act *ibid*. To recoup the loss to State Exchequer and to mobilise additional resources as well, the luxury tax is now proposed to be levied at the rate of 8 percentum where the charges for accommodation provided in a hotel or lodging house are Rs. 50/- per person per day but do not exceed Rs. 150, and at the rate of 10 percentum where such charges exceed Rs. 150.

With a view to prevent tax evasion, it is desirable that tax payers are issued registration certificates and it is made obligatory for them to issue bills and maintain proper accounts. Besides, the existing system of filing returns, payment of luxury tax and assessment on monthly basis has proved to be too cumbersome both for the proprietors of hotels as well as for the Department, as such it is decided to replace this system by making provisions for quarterly returns, half-yearly assessments and payments of tax on monthly basis. Further, for ensuring smooth flow of luxury tax to the State exchequer, it is also essential to provide for the levy of appropriate interest on delayed payments of tax. In addition, the provisions relating to transfer of proceedings from one subordinate authority to the other are also considered necessary and besides the provisions relating to assessment, re-assessment and revision are required to be suitably revised. These have necessitated amendments in the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979.

This Bill seeks to achieve these objectives.

NAGIN CHANDER PAL,
Minister-in-charge.

SHIMLA :

The 18th March, 1991 .

FINANCIAL MEMORANDUM

Clause 3 of the Bill when enacted will yield rupees seven lakhs approximately annually as additional income to the State exchequer without involving any extra expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 seeks to amend section 17 of the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Act, 1979 to empower the State Government to make rules for prescribing the form, fee and the manner in which the registration certificate is to be issued, the manner of payment of luxury tax, penalty or interest, the manner in which the opportunity is to be given to the proprietor and the conditions as may be prescribed for rectifying any clerical or arithmetical mistake apparent on record. The proposed delegation of powers are essential and normal in character.

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[Excise and Taxation Department File No. EXN-F(21)-4/87].

The Governor, Himachal Pradesh, after having been informed of the subject matter of the Himachal Pradesh Tax on Luxuries (in Hotels and Lodging Houses) Amendment Bill, 1991, recommends under Article 207 of the Constitution of India, the introduction and consideration of the said Bill in the State Legislative Assembly.

